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Order 2002-6-17
Served: July 1, 2002



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 27th of June, 2002

Fitness Determination of

FLORIDA COASTAL AIRLINES, INC.

as a commuter air carrier under section 49 U.S.C.
41738

Docket OST-01-10874- 6

**ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF COMMUTER AIR CARRIER AUTHORITY**

Summary

By this order, we tentatively find that Florida Coastal Airlines, Inc. (Florida Coastal) is a citizen of the United States and is fit, willing, and able to conduct scheduled passenger operations as a commuter air carrier using small aircraft.¹

Background

Section 41738 of Title 49 of the United States Code ("the Statute") and section 298.21(d) of the Department's Aviation Economic Regulations direct us to determine whether companies proposing to provide scheduled passenger service as commuter air carriers are "fit, willing, and able to perform the service," and to ensure that all operations relating to this service conform to the safety standards established by the Federal Aviation Administration (FAA). In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act's liberal entry policy with Congress' concern for operational safety and consumer protection. The three areas of inquiry that must be addressed in order to determine a carrier's fitness are whether the applicant: (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) has sufficient financial resources to commence the operations proposed without posing an undue risk to consumers or their funds, and (3) will comply with the Statute and regulations imposed by federal and state agencies. We must also determine that the applicant is a U.S. citizen.

¹ Specifically, we propose to limit the applicant's authority to the use of aircraft that can be operated under its Part 135 Air Carrier Certificate issued by the Federal Aviation Administration.

On October 19, 2001, Florida Coastal filed an application in Docket OST-01-10874 for authority to provide scheduled passenger operations as a commuter air carrier pursuant to section 41738 of the Statute. Florida Coastal accompanied its application with the fitness information required by section 204.3 of our regulations.²

No answers were filed to the application and no other issues regarding the applicant have come to our attention. Under these circumstances, we propose to decide the issue of the applicant's fitness on the basis of the written record. Upon review of the information in the application and the safety and compliance information on the carrier received from the FAA, we tentatively conclude that Florida Coastal is a U.S. citizen and has met the fitness test to conduct commuter operations. We will, however, give interested parties an opportunity to show cause why we should not adopt as final our tentative determination that Florida Coastal is fit, willing, and able to provide commuter service.

The Company

Florida Coastal, based in Ft. Pierce, Florida, was organized in November 1995, as a corporation under the laws of the State of Florida. Florida Coastal holds a Part 135 certificate from the FAA issued in October 1997. Since that time, the carrier has provided charter service primarily from St. Lucie County International Airport, Florida, to Freeport, Treasure Cay and Walkers Cay, Bahamas. The carrier proposes to provide scheduled passenger service between its base of operations at St. Lucie County International Airport and Orlando using two of its three nine-seat Cessna 402C aircraft.

The company's founder, Mr. Dean A. Forest, holds 83 percent of the carrier's issued and outstanding stock. The other owner of Florida Coastal is Mr. Dean King (17 percent) who formed the King Construction Company in 1950s and The King Company in 1983.³

FITNESS

Managerial Competence

Mr. Dean Forest has served as Florida Coastal's Chief Executive Officer and President since its inception. He also serves as Chairman of the carrier's Board of Directors and is employed as a pilot with American Airlines where his current duties require that he fly 65 hours a month. Mr. Forest received aviation training at Embry-Riddle Aeronautical University where he received a Bachelor of Science degree in Aeronautical Science. He began his aviation career while attending Embry-Riddle as a flight instructor for Ram Executive Aviation, Romeo Flying Service and Phoenix East Aviation. From 1988 to 1989, he was First Officer for Nashville Eagle Airlines. Since 1989, Mr. Forest has been a pilot with TWA and American.⁴ Mr. Forest holds an FAA-issued Airline Transport Pilot license and has logged over 10,000 flight hours.

² Florida Coastal filed information supplementing its application on January 18 and June 5, 2002.

³ Both companies were involved in hydraulic dredging operations.

⁴ Mr. Forest's employment with American is the result of the transfer of certificate authority held by TWA to American.

Mr. Dean King holds the position of Florida Coastal's Vice President. Although he has no aviation experience, he has a significant business background having formed two companies involved in marine contracting where he served as President. Mr. King resides in Michigan and will not be involved in Florida Coastal's day-to-day operations. His primary function will be that of a consultant to Mr. Forest in business and finance matters.

Mr. Michael Baker IV serves as Florida Coastal's Chief Pilot. Mr. Baker began his aviation career in 1986 as pilot with Rose Air Service (1986-1987) and as a Corporate Pilot with Michael Baker III Associates (March 1986 to February 1990). He has also served as a flight instructor with St. Lucie Air Academy (March 1990 to April 1993) and as a Captain with Able Aviation/American Jets (November 1990 to April 1993). He held the position of Captain with Clyde E. Williams & Associates from April 1993 to February 1994. He served as Chief Pilot with Houck Enterprises from March 1994 to December 1996, and as a Captain with Able Aviation from January 1997 to January 1998. In addition to serving as Florida Coastal's Chief Pilot, Mr. Baker serves as a Captain and Director of Corporate Aviation on a part-time basis with Bahama Star Limited.⁵ He holds an FAA-issued Airline Transport Pilot license and has logged over 3,500 flight hours.

Mr. Hassan Ghaffari has served as Florida Coastal's Director of Maintenance since November 2001. He attended George T. Baker School of Aeronautics where he received a Degree in Aerospace Maintenance in 1984. From 1984 to 2000, he served as Director of Maintenance with Banyan Air Service. In addition to serving as Florida Coastal's Director of Maintenance, he owns and operates Aircraft Service Center, a maintenance and overhaul facility, which will perform all maintenance on Florida Coastal's aircraft. He holds an FAA-issued Airframe and Powerplant Mechanic certificate with inspection authorization.

Mr. John Kroon, Florida Coastal's Director of Operations, has held that position since November 2001. From January 1965 to June 1979 he held positions ranging from Assistant Manager of Flight Operations to Captain for the following carriers: East Coast Flying Service, Pioneer Airways, Air Virginia and Southern Airways. Mr. Kroon served as Chief Pilot with Saber Air Express (July 1979 to December 1980) and Trans International Airways (January 1981 to October 1985). In November 1985, he founded Flight Crews International which performs air carrier contract services and has served, through Flight Crews International, as Director of Operations and Chief Pilot of three Florida-based air taxi operators. Mr. Kroon notes that he will be available to devote as much time as is required to his duties as Florida Coastal's Director of Operations. He holds an FAA-issued Airline Transport Pilot license and has logged over 18,000 flight hours.

Although some of the key personnel hold positions and ownership in other aviation related entities, the FAA has advised us that the carrier's key technical personnel are acceptable to it.⁶

⁵ Mr. Baker has been employed by Bahama Star since April 1999. From January 1998 to April 1999, he held non-aviation related positions.

⁶ Before authorizing a carrier to conduct air transportation operations, the FAA also evaluates certain of the carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of their skills and technical ability.

Thus, we tentatively conclude that, taken as a whole, Florida Coastal's management team will have the necessary managerial skills and technical capability to conduct the limited scheduled passenger operations that it proposes.

Financial Condition and Operating Proposal

If granted the commuter authority it seeks, Florida Coastal proposes to provide scheduled service consisting of two round trip flights per day (Monday-Friday) between St. Lucie County International Airport and Orlando.⁷ It currently owns three nine-seat Cessna 402C aircraft, two of which it will use in providing its proposed scheduled service.⁸ The remaining Cessna will be utilized exclusively for on-demand operations.

Florida Coastal submitted income statements for years-ended December 31, 1999, 2000, and 2001 showing net profits of \$30,700, \$67,300, and \$144,000, respectively. The carrier also provided a balance sheet as of April 30, 2002, that reflected working capital of \$68,000 and total equity of \$319,000.

Florida Coastal has provided forecasts of its pre-operating costs and its first-year revenues and expenses for the proposed commuter operations. As indicated above, the carrier will be using the same aircraft to provide its proposed commuter service that it is currently using to provide its on-demand operations. Florida Coastal indicated that all necessary infrastructure is in place, including operations and management personnel, pilots, and maintenance facilities. Thus, start-up expenses will be minimal (only about \$14,000) and primarily limited to deposits for security equipment, reservation systems, gate handling and advertising.

Florida Coastal projects first-year total operating expenses of \$408,900 based on a total of 78 hours of scheduled service per month. The carrier's estimates have been derived from information compiled by its management team using data from its current air taxi operations. We have reviewed Florida Coastal's expense forecasts and find that they appear to be reasonable. Therefore, based on our analysis of its forecast, it appears that Florida Coastal will need \$116,000 to meet the Department's financial fitness criteria for its proposed commuter operations.⁹

The carrier has provided a letter from First National Bank and Trust Company of Ft. Pierce, Florida, indicating that Florida Coastal has liquid capital resources of approximately \$145,000 as of May 30, 2002, and a line-of-credit of \$24,000 with American Express. Thus, it appears that, at present, Florida Coastal has available funds adequate to cover the financial requirements for its initial commuter operations. Therefore, we tentatively conclude that Florida Coastal will have access to resources sufficient to allow it to commence the proposed commuter operations without posing an undue risk to consumers or their funds. However, we will require that the

⁷ One round trip per day will be provided on Saturday and Sunday.

⁸ Florida Coastal's proposed commuter operations will be conducted with a single aircraft, with a second Cessna used for backup.

⁹ To meet the Department's financial fitness criteria, an applicant should have access to financial resources sufficient to cover its pre-operating expenses (\$14,000) and the expenses that are reasonably projected to be incurred during three months of operations (\$102,000). In calculating available resources, projected revenues may not be used.

company provide updated financial information showing that Florida Coastal continues to have funds sufficient to meet our financial fitness criteria available to it prior to making its commuter authorization effective.¹⁰

Compliance Disposition

Florida Coastal appears to have a favorable compliance disposition. Our search of the Department's enforcement files found no record or problems involving this company, its owners, or its key personnel. The FAA reports that Florida Coastal is overall a safe operating airline with high time pilots and that the management team is qualified for their positions. There are no FAA enforcement actions pending against the carrier and it has not had any accidents or incidents. While the FAA reports that, in the past five years, there have been some administrative actions involving Florida Coastal, most of these were resolved with letters of correction. None of these cases involved civil penalties or action against the carrier's FAA certificate. The FAA states that the carrier has a very good working relationship with it.

The applicant states that there are no actions or outstanding judgments against it, its owners, or its key personnel, nor have any charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations been brought against any of these parties in the past ten years. Aside from the FAA actions referenced above, there have been no formal complaints filed in the past five years or orders issued in the past ten years finding Florida Coastal, its key personnel, or persons having a substantial interest in it to be in violation of the Statute or of the Federal Aviation Regulations.

Based on the above, we tentatively conclude that Florida Coastal has the proper regard for the laws, rules and regulations governing its services to ensure that its aircraft and operations will conform to applicable safety standards and that acceptable consumer relations practices will be followed.

CITIZENSHIP

49 U.S.C. 41102 requires that authority to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires that the president and two-thirds of the Board of Directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. We have also interpreted the Statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

As noted earlier, all of the Florida Coastal's issued stock is held by Messrs. Forest and King. Each of these individuals is a citizen of the United States. Further, with the exception of Mr. Kroon, Florida Coastal's Director of Operations, all of the management team and key personnel are U.S. citizens. Moreover, Florida Coastal has provided an affidavit attesting that it is a citizen

¹⁰ This information must include a revised list of Florida Coastal's pre-operating expenses, broken down between those already paid and those remaining to be paid, as well as independent verification that Florida Coastal has available funds sufficient to cover all remaining and/or unpaid pre-operating expenses and to provide the necessary working capital reserve.

of the United States within the meaning of the Statute and that it is actually controlled by U.S. citizens. Our review of the applicant has uncovered no reason to suggest that control of Florida Coastal rests with non-U.S. citizens.

Based on the above, we tentatively conclude that Florida Coastal is a citizen of the United States and is fit, willing, and able to provide the limited scheduled passenger service it proposes as a commuter air carrier.

OBJECTIONS

We will give interested persons 14 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 days thereafter. We expect that persons objecting to our tentative findings and conclusions will support their objections with relevant and material facts. We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to Florida Coastal's fitness and commuter authority.

EFFECTIVE COMMUTER AUTHORIZATION CONDITIONS AND LIMITATIONS

In the event that we find Florida Coastal fit, willing, and able to conduct the proposed commuter service, we will issue to it a Commuter Air Carrier Authorization. However, that authorization will not become effective until the carrier has fulfilled all requirements for effectiveness as set forth in the Terms, Conditions, and Limitations attached to its authorization.¹¹ Among other things, this includes our receipt of evidence that the carrier has been issued Operations Specifications by the FAA authorizing scheduled passenger service under Part 135 of the Federal Aviation Regulations, evidence of liability insurance coverage that meets the requirements of Part 205 of our rules for commuter air carriers, and evidence that Florida Coastal continues to have adequate financial resources available to it to meet our financial fitness criteria.

Given the relatively limited scope of Florida Coastal's proposed operations and the part-time nature of its management, including its key personnel team, we propose to limit any authority issued to the applicant to operations conducted under Part 135. Should Florida Coastal subsequently desire to acquire and operate larger aircraft that would require certification from the Federal Aviation Administration under Part 121, it must first be determined fit for such operations.¹²

Further, we remind Florida Coastal of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. To be assured that commuter air carriers continue to be fit after effective authority has

¹¹ We also reserve the right to stay the effectiveness of Florida Coastal's authority if any new information becomes available to us that warrants such action.

¹² We note that the operation of larger aircraft could require the carrier to have access to additional funds and hire additional management personnel.

been issued to them, we require that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness. In this regard, should Florida Coastal propose any substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.¹³ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under the Statute.¹⁴

ACCORDINGLY:

1. We direct all interested persons to show cause why we should not issue an order finding that Florida Coastal Airlines, Inc., is fit, willing, and able under 49 U.S.C. 41738 to provide scheduled passenger service as a commuter air carrier using small aircraft pursuant to Part 135 of the Federal Aviation Regulations.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the award of authority set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, in Docket OST-01-10874 and serve them upon all persons listed in Attachment A no later than 14 days after the service date of this order; answers to objections shall be filed no later than 7 days thereafter.
3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.¹⁵
4. In the event that no objections are filed, we will consider all further procedural steps to be waived, and we will enter an order making final our tentative findings and conclusions set out here and awarding Florida Coastal Airlines, Inc., a Commuter Air Carrier Authorization, subject to the attached specimen Terms, Conditions, and Limitations.
5. We will serve a copy of this order on the persons listed in Attachment A.

¹³ The carrier may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership, or management, and to determine what additional information, if any, will be required under section 204.5. Moreover, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. If the carrier fails to file the information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's commuter authority.

¹⁴ We also remind Florida Coastal about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the commuter authority granted to a company shall be revoked if the company does not commence actual flying operations under that authority within one year of the date of the Department's determination of its fitness; (2) if the company commences operations for which it was found fit and subsequently ceases such operations, it may not resume scheduled passenger operations unless its fitness has been redetermined; and (3) if the company does not resume such operations within one year of its cessation, its authority shall be revoked for dormancy.

¹⁵ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

6. We will publish a summary of this order in the Federal Register.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
<http://dms.dot.gov>*



Specimen
Terms, Conditions, and Limitations

FLORIDA COASTAL AIRLINES, INC.

is authorized to engage in scheduled passenger air transportation operations as a commuter air carrier.

This authority is subject to the following provisions:

- (1) The authority to conduct scheduled passenger operations will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:
 - (a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).
 - (b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.
 - (c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.
 - (d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.
- (2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card) or issue tickets for scheduled passenger operations, and any advertisement or listing of flights by the holder must prominently state: "This service is subject to receipt of government operating authority."
- (3) The holder shall at all times conduct its operations in accordance with the requirements of 14 CFR Part 298 and any other regulations prescribed by the Department of Transportation for the services authorized here, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (4) The holder's authority is limited to operations conducted pursuant to Part 135 of the Federal Aviation Regulations. In the event that the holder wishes to institute operations that would require Part 121 certification from the FAA it must first be determined fit for such operations.

- (5) *The holder's authority is effective only to the extent that such operations are also authorized by the FAA, and comply with all Department of Transportation requirements concerning security.*
- (6) *The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*
- (7) *The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render this authority ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this authority.*
- (8) *The holder shall maintain in effect at all times with the Department of Transportation current information on OST Registration Form 4507.*
- (9) *In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:*
- (a) *The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.*
 - (b) *The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.*
- (10) *Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(l)), it must first comply with the requirements of 14 CFR 204.5.*
- (11) *In the event that the holder does not commence actual flying operations as a commuter air carrier under this authority within one year of the date of the Department's determination of its fitness, its commuter authority shall be revoked for dormancy. Further, in the event that the holder commences but subsequently ceases all scheduled passenger operations, the authority granted here shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume such operations within one year of its cessation, its commuter authority shall be revoked for dormancy.*

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